

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ARTHUR T. GRIFFIN JR.,

Petitioner,

vs.

MICHEAL-MEYERS,

Respondent.

8:23CV130

MEMORANDUM AND ORDER

This matter is before the Court on initial review of Petitioner Arthur T. Griffin Jr.'s ("Griffin") Petition for Writ of Habeas Corpus filed pursuant to [28 U.S.C. § 2241](#). [Filing No. 1](#). The Court conducts this initial review of the petition pursuant to [28 U.S.C. § 2243](#) and Rule 1(b) of the *Rules Governing Section 2254 Cases in the United States District Courts* which allows the Court to apply Rule 4 of those rules to a [section 2241](#) action. For the reasons discussed below, the Court will dismiss the petition without prejudice.

In his petition filed on April 3, 2023, Griffin alleged he was a pretrial detainee confined in the Douglas County Correctional Center ("DCCC") pursuant to a "6 month or more misdemeanor" charge in "CR23-3447." [Filing No. 1 at 1–2](#). Liberally construed, Griffin alleged that he was being held in violation of the Constitution, laws, or treaties of the United States due to a lack of probable cause to support his arrest. [Id. at 6](#). As relief, Griffin seeks a "mandamus award or tremble [sic] damages award." [Id. at 7](#) (punctuation omitted).

Griffin's state court records, available to this Court online, reveal that, on July 7, 2023, a trial was held at which Griffin was found guilty of trespass and assault on a

public safety officer with bodily fluid. Griffin was sentenced that same day to 270 days' jail on each count to be served concurrently.¹ On July 31, 2023, Griffin contacted the Clerk of the Court by telephone and stated he had been released from custody, though he has not filed a notice of his updated address with the Court. The DCCC's online public inmate records also indicate that Griffin is no longer in custody there.²

As the Eighth Circuit Court of Appeals has explained,

"Article III of the United States Constitution limits the jurisdiction of the federal courts to actual, ongoing cases and controversies." *Haden v. Pelofsky*, 212 F.3d 466, 469 (8th Cir.2000); see U.S. Const. art. III, § 2, cl. 1. "When, during the course of litigation, the issues presented in a case 'lose their life because of the passage of time or a change in circumstances . . . and a federal court can no longer grant effective relief,' the case is considered moot." *Id.* (quoting *Beck v. Mo. State High Sch. Activities Ass'n*, 18 F.3d 604, 605 (8th Cir.1994) (alteration in original)); see also *Spencer v. Kemna*, 523 U.S. 1, 7, 118 S.Ct. 978, 140 L.Ed.2d 43 (1998) (stating an action becomes moot where it "no longer present[s] a case or controversy under Article III"). If an issue is moot in the Article III sense, we have no discretion and must dismiss the action for lack of jurisdiction. See *Powell v. McCormack*, 395 U.S. 486, 496 n. 7, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969).

Ali v. Cangemi, 419 F.3d 722, 723–24 (8th Cir. 2005).

Because Griffin has been convicted, his challenge to his pretrial detention is moot. See *Jackson v. Clements*, 796 F.3d 841, 843 (7th Cir. 2015) ("Once Mr. Jackson was convicted, the claims concerning his pre-trial confinement became moot."); *Williams v. Slater*, 317 Fed.Appx. 723, 724–25 (10th Cir. 2008); *Yohey v. Collins*, 985

¹ The Court takes judicial notice of the state county court records related to this case in *State v. Arthur Griffin Jr*, No. CR23-3447, County Court of Douglas County, Nebraska. See *Stutzka v. McCarville*, 420 F.3d 757, 760 n.2 (8th Cir. 2005) (court may take judicial notice of judicial opinions and public records); Federal Rule of Evidence 201 (providing for judicial notice of adjudicative facts). Nebraska's judicial records may be retrieved on-line through the JUSTICE site, <https://www.nebraska.gov/justice/case.cgi>. Relevant state court records are attached to this Memorandum and Order.

² See <https://corrections.dccorr.com/inmate-locator> (last viewed Aug. 8, 2023) (no search results for Arthur Griffin).

F.2d 222, 228–29 (5th Cir. 1993) (“[C]laims for federal habeas relief for pretrial issues are mooted by Yohey’s subsequent conviction.”); *Thorne v. Warden, Brooklyn House of Detention for Men*, 479 F.2d 297, 299 (2d Cir. 1973); *Medina v. California*, 429 F.2d 1392, 1393 (9th Cir. 1970). Moreover, the case is moot because Griffin was released from the DCCC and is no longer in custody pursuant to the criminal action challenged in his petition. See *McGill v. Mukasey*, No. 8:08CV345, 2009 WL 277556, at *1 (D. Neb. Feb. 5, 2009) (finding habeas petition moot where petitioner was released from custody, there was no continuing injury traceable to the respondents, and court could not issue any decision which would further the relief sought by the petitioner). For the sake of completeness, the Court also notes that Griffin’s requested relief of damages is not available in a federal habeas corpus proceeding. *Preiser v. Rodriguez*, 411 U.S. 475, 494 (1973) (“If a state prisoner is seeking damages, he is attacking something other than the fact or length of his confinement, and he is seeking something other than immediate or more speedy release—the traditional purpose of habeas corpus. In the case of a damages claim, habeas corpus is not an appropriate or available federal remedy.”).

Finally, because “the detention complained of arises from process issued by a state court,” Griffin must obtain a certificate of appealability. See 28 U.S.C. § 2253; Fed. R. App. P. 22(b)(1); see also *Hoffler v. Bezio*, 726 F.3d 144, 153 (2d Cir. 2013) (collecting cases of courts that ruled a state prisoner who petitions for habeas relief under 28 U.S.C. § 2241 must obtain a certificate of appealability). The standards for certificates (1) where the district court reaches the merits or (2) where the district court rules on procedural grounds are set forth in *Slack v. McDaniel*, 529 U.S. 473, 484–85

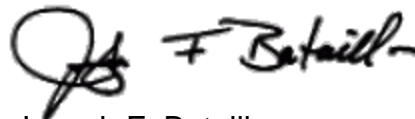
(2000). The Court has applied the appropriate standard and determined that Griffin is not entitled to a certificate of appealability.

IT IS THEREFORE ORDERED that:

1. The petition for writ of habeas corpus, [Filing No. 1](#), is dismissed without prejudice. No certificate of appealability has been or will be issued.
2. The Court will enter judgment by separate document.
3. Petitioner's pending motions, [Filing No. 10](#); [Filing No. 11](#); [Filing No. 12](#), are denied as moot.
4. The Clerk of the Court is directed to send a copy of this Memorandum and Order and Judgment to Petitioner at the address the Court has on file and to the following address: Sienna Francis House Men's Shelter, 1117 North 17th Street, Omaha, NE 68102.

Dated this 9th day of August, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon", with a stylized flourish at the end.

Joseph F. Bataillon
Senior United States District Judge

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JOURNAL ENTRY AND ORDER

IN THE COUNTY COURT OF DOUGLAS COUNTY, NEBRASKA

ST V. ARTHUR GRIFFIN JR

Printed on 7/07/2023 at 10:44

Room 01C27

Case ID: CR 23 3447

Page 1

Citation: K 1193846

Date of Hearing 7/07/2023

CHARGES (AMENDMENTS/PLEAS/FINDINGS/FINES/PRESENTENCE/JAIL/DISMISSALS)

CHARGE	STATUTE	DESCRIPTION	CLASS	TYPE
01	20-154	TRESPASS Found: Guilty		MSD Jail: 270 days concurrent
02	28-934	Assault pub safety ofcr w/ bodily flu Found: Guilty	1	MSD Jail: 270 days concurrent

A P P E A R A N C E S A N D A D V I S E M E N T

Judge	Thomas K Harmon
Defendant	ARTHUR GRIFFIN JR in custody
Defense Counsel	Holst, Jordan, Elizabeth
Prosecutor	Laurie E Burgess

T R I A L / M O T I O N H E A R I N G

Trial held; Defendant found as shown above.

Hearing held on: Trial

Bench Trial

Exhibits introduced: Nos. 1Received 1 .S E N T E N C I N G

Defendant was granted allocution and sentence was pronounced by the Court.

Defendant is sentenced to the Douglas County Correctional Center, for terms as shown above, and is to pay costs of this prosecution.Credit for 124 days served.

Defendant to pay Court Costs	<u>\$49.00</u>
Other	<u>\$1.00</u>

W I T N E S S E S

Witnesses: Ofc. Dominic Lombardo	CALLED	For Plaintiff	****
Ofc. Iris Ortiz	CALLED	For Plaintiff	****

A D D I T I O N A L E N T R I E S O F R E C O R D

Prior to receiving evidence, the Defendant in this case requested permission to represent himself pro-se.

The Court conducted an inquiry on the record and heard submissions from both the State and the Defendant individually.

For Good Cause shown, the Court determined that the Defendant understood the peril and consequences of representing himself and on that basis dismissed the Public Defender from serving as his counsel of Record.

Trial commenced with Defendnat representing himself.

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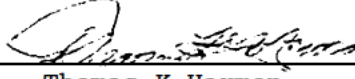
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Page 2

Citation: K 1193846

Date of Hearing 7/07/2023

Hon.


Thomas K Harmon7/07/2023
Date

R.Barrett

Bailiff

Tape Nos. Digital Recording

Journal Entry and Order(s) copies to:

Ashford, John, Paul,
DEFENDANT

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jordan.holst@douglascounty-ne.gov

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